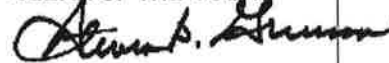


EXHIBIT A

COMPLAINT WITH JURY DEMAND

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Steven D. Grierson
CLERK OF THE COURT



COMJD
STEVEN H. BURKE, ESQ.
Nevada Bar No. 14037
LAW OFFICE OF STEVEN H. BURKE, LLC
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9205 W. Russell Road, Suite 240
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CASE NO: A-19-800900-C
Department 31

Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

PAYNE KEE, an individual

Plaintiff,

vs.

BULWARK EXTERMINATING, LLC;
DOES I through X; and ROE
Corporations XI through XX, inclusive,

Defendant.

Case No.
Dept. No.

COMPLAINT WITH JURY DEMAND

COMPLAINT

COMES NOW Payne Kee ("Plaintiff" or "Kee"), by and through his attorney, Steven H. Burke, Esq. of Law Office of Steven H. Burke, and hereby files his Complaint and complains of Defendant Bulwark Exterminating, LLC ("Defendant" or "Bulwark") as follows:

VENUE AND JURISDICTION

1. This is a civil action for damages under state and federal laws prohibiting unlawful employment actions and to secure the protection of and to redress deprivation of rights under these laws.

2. Jurisdiction and venue are based upon federal and state law.

3. Jurisdiction and venue are also proper based upon Plaintiff's claims under Nevada state and common law.

4. Plaintiff hereby designates Clark County as the venue for this proceeding per NRS

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1 § 13.040 and files in the Eighth Judicial District Court accordingly.

2 5. The alleged unlawful employment actions occurred in this judicial district.

3 **PARTIES**

4 6. At all times relevant, Plaintiff is and was an individual residing in Clark County,
5 Nevada.

6 7. At all times relevant, Defendant is and was a Foreign Corporation incorporated
7 under the laws of the State of Arizona and listed as a Foreign Entity with the Nevada Secretary of
8 State.

9 8. At all times relevant, Defendant was conducting business in Clark County,
10 Nevada.

11 9. At all times relevant, Defendant had custody and/or control over Plaintiff and his
12 employment, and Defendant was responsible for Plaintiff's labor and employment matters.

13 10. At all times relevant, Plaintiff was an employee of Defendant as that term is
14 defined in NRS Chapter 608, NRS Chapter 613, 29 U.S.C. § 203, and 42 U.S.C. § 2000e.

15 11. At all times relevant, Defendant was Plaintiff's employer as that term is defined in
16 NRS Chapter 608, NRS Chapter 613, 29 U.S.C. § 203, and 42 U.S.C. § 2000e.

17 12. The true names and capacities, whether individual, corporate, associate or
18 otherwise of other Defendants hereinafter designated as Does I-X and Roe Corporations XI-XX,
19 inclusive, who are in some manner responsible for the injuries described herein, and who were,
20 upon information and belief, Plaintiff's "employer" is unknown to Plaintiff at this time who
21 therefore sues said Defendants by such fictitious names and will seek leave of the Court to amend
22 this Amended Complaint to show their true names and capacities when ascertained.

23 13. Plaintiff hereby demands a jury trial on all issues triable by jury herein.

24 **PROCEDUARL REQUIREMENTS**

25 14. Plaintiff has satisfied all administrative and jurisdictional requirements necessary
26 to maintain this lawsuit. Plaintiff timely filed his charge of discrimination with the Nevada Equal
27 Rights Commission ("NERC") on or about February 11, 2019. *See* a true and correct copy of
28 Plaintiff's Charge of Discrimination attached hereto as **Exhibit 1**.

FACTUAL ALLEGATIONS

25. Bulwark did not train Kee to possess absorbent material in the Service Vehicle and

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1 dispose of empty containers in accordance with Nevada law.

2 26. The NDA Inspection that occurred on or about March 28, 2017 resulted in a fine
3 that Bulwark deducted from Kee's paycheck.

4 27. In or about May, 2018, Mr. Wayne Bryant, Kee's supervisor and Bulwark Las
5 Vegas Branch Manager ("Branch Manager"), instructed Kee to spray pesticides beyond ten (10)
6 feet of a home.

7 28. After Kee refused to spray pesticides beyond ten (10) feet of the home, Branch
8 Manager told Kee that he was a former Correctional Officer in the State of Texas and said "you
9 can do things my way or the highway."

10 29. Branch Manager is a Caucasian male and Kee is an African American male.

11 30. Branch Manager intentionally withheld several of Kee's positive reviews, from
12 which Kee was not compensated commission for.

13 31. Upon information and belief, Branch Manager intentionally withheld pertinent job-
14 related communication from Kee.

15 32. On or about July 6, 2017, NDA filed a Complaint and Notice of Hearing against
16 Bulwark, which sought to revoke, suspend or modify Bulwark's pest control license.

17 33. After the filing of the Complaint, the disparate treatment of Mr. Kee by Branch
18 Manager and other Bulwark supervisors became exacerbated.

19 34. Kee was subject to several instances of racial discrimination and racial epithets by
20 Bulwark customers which Bulwark was aware of, which included customers calling him "Nigger"
21 and yelling at Kee to get off their property.

22 35. Kee understood these acts and comments by Bulwark customers and Bulwark's
23 acquiescence thereto as stereotypical and discriminatory on the basis of his race.

24 36. Despite this hostile work environment, Kee continued to be an excellent
25 Exterminator Technician.

26 37. Kee made internal complaints to Bulwark about Branch Manager and Bulwark
27 customers.

28 38. Upon information and belief, Bulwark did not investigate Kee's complaints about

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1 Branch Manager.

2 39. Upon information and belief, Bulwark did not investigate the racist acts and
3 comments Kee was subjected to by customers and demanded Kee to continue servicing these
4 customers.

5 40. Further, Kee made internal complaints that he felt he was being retaliated against
6 by Branch Manager and other Bulwark supervisors because of his complaints and refusal to spray
7 pesticides beyond ten (10) feet of homes.

8 41. On or about September 10, 2018, Defendant terminated Kee.

9 42. Defendant's termination of Kee occurred a short time after Kee made internal
10 complaints and a short time after the NDA investigation was concluded.

11 43. Defendant's proffered reason of termination was that Kee generated too many
12 customer complaints and did not come into the office for a scheduled download.

13 44. Defendant's proffered reason for termination was pretextual.

14 45. Kee was terminated in retaliation for his participation in protected activities.

15 46. Upon information and belief, after Bulwark terminated Kee, it terminated Branch
16 Manager.

17 **FIRST CAUSE OF ACTION**
18 **RACE DISCRIMINATION/HARASSMENT**
19 **42 U.S.C. § 2000e et seq. / NRS § 613.330**

20 47. Kee hereby realleges and incorporates each and every allegation previously made
21 herein.

22 48. Kee is African-American.

23 49. Kee was an exemplary employee and qualified for his position.

24 50. Despite his qualifications, Defendant, through the actions of its agents as more
25 fully set forth above, subjected Kee to adverse employment actions, including, but not limited to,
26 harassing Kee by inflicting derogatory and offensive comments based on Kee's race and by
27 discriminating against and eventually terminating Kee on the basis of his race.

28 51. Defendant, through its agents, participated in conduct that was degrading to Kee

1 and African-Americans. Such conduct had the purpose or effect of creating an intimidating,
2 hostile, and offensive work environment, and had the purpose or effect of unreasonably
3 interfering with Kee's work performance.

4 52. The acts and/or omissions of Defendant and its agents complained of herein are in
5 violation of 42 U.S.C. § 2000e *et seq.*

6 53. The acts and/or omissions of Defendant and its agents complained of herein are in
7 violation of NRS § 613.330 *et seq.*

8 54. As a direct and proximate result of Defendant's unlawful activity, Kee has
9 sustained damages in excess of Fifteen Thousand Dollars (\$15,000.00).

10 55. The conduct of Defendant has been malicious, fraudulent or oppressive and was
11 designed to vex, annoy, harass or humiliate Kee and, thus, Kee is entitled to punitive damages
12 with respect to his claim.

13 56. As a result of Defendant's conduct, as set forth herein, Kee has been required to
14 retain the services of an attorney and, as a direct, natural, and foreseeable consequence thereof,
15 has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

16 **SECOND CAUSE OF ACTION**

17 **RETALIATION**

18 **42 U.S.C. § 12203 / 42 U.S.C. § 2000e *et seq.* / NRS § 613.340**

19 57. Kee hereby realleges and incorporates each and every allegation previously made
20 herein.

21 58. As set forth more fully above, Defendant retaliated against Kee when he opposed
22 discrimination and unlawful conduct, in good faith, as detailed in his internal complaint(s) and/or
23 discussion(s) with Defendant.

24 59. There exists a temporal proximity in relation to Kee's complaints of unlawful
25 discrimination and Kee's resulting termination.

26 60. Defendant subjected Kee to undeserved disciplinary conduct and eventual
27 termination in close proximity after Kee complained to Defendant of discriminatory behavior and
28 requested reasonable accommodations.

61. Defendant retaliated against Kee when he opposed discrimination and unlawful conduct by terminating Kee and subjecting him to harassing behavior.

62. This retaliatory action was in response to Kee's participation in protected activities.

63. Defendant's termination of Kee constituted a retaliatory discharge in violation of 42 U.S.C. § 12203, 42 U.S.C. § 2000e *et seq.*, and NRS § 613.340.

64. By taking these adverse actions, Defendant has engaged in discriminatory practices with malice and/or with reckless disregard to Kee's protected rights. As a result, Kee has been damaged.

65. As a direct and proximate result of Defendant's unlawful activity, Kee has sustained damages in excess of Fifteen Thousand Dollars (\$15,000.00).

66. Defendant has acted willfully and maliciously, and with oppression, fraud, or malice, and as a result of Defendant's wrongful conduct, Kee is entitled to an award of exemplary or punitive damages.

67. As a result of Defendant's conduct, as set forth herein, Kee has been required to retain the services of an attorney and, as a direct, natural, and foreseeable consequence thereof, has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION
TORTIOUS DISCHARGE-PUBLIC POLICY TORT
PUBLIC POLICY OF SAFE EMPLOYMENT PRACTICES
AND PROTECTION OF HEALTH AND SAFETY

68. Kee hereby realleges and incorporates each and every allegation previously made herein.

69. As set forth more fully above, despite Defendant's express directions, Kee opposed spraying pesticides beyond ten (10) feet of homes because it was unlawful and involved the health and safety of himself, employees, customers and the community.

70. Defendant terminated Kee for reasons which violate public policy including, but not limited to, Nevada's public policy against terminating Plaintiff for refusing to work under conditions unreasonably dangerous to the employee and/or seeking a safe work place and for

1 reporting unsafe working conditions to county and/or state agencies.

2 71. As a direct and proximate result of Defendant's conduct described hereinabove,
3 Kee has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000).

4 72. As a result of Defendant's conduct, as set forth herein, Kee has been required to
5 retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
6 has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

7 73. Defendant acted willfully and maliciously, and with oppression, fraud, or malice,
8 and a result of Defendant's wrongful conduct, Kee is entitled to an award of exemplary or
9 punitive damages.

10 **FOURTH CAUSE OF ACTION**
NEGLIGENT HIRING, TRAINING, AND SUPERVISION

11 74. Kee hereby realleges and incorporates each and every allegation previously made
12 herein.

13 75. Defendant breached its duty of reasonable care to protect Kee from the negligent
14 and/or careless actions of their own agents, officers, employees, customers and others.

15 76. Defendant breached its duty of reasonable care by hiring individuals with a
16 propensity towards committing unlawful acts against Kee.

17 77. Defendant breached its duty of reasonable care by failing to adequately train and
18 supervise their employees by with lawful policies and procedures of discrimination, harassment,
19 and retaliation.

20 78. As a direct and proximate result of Defendant's conduct described hereinabove,
21 Kee has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000).

22 79. As a result of Defendant's conduct, as set forth herein, Kee has been required to
23 retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
24 has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

25 80. Defendant acted willfully and maliciously, and with oppression, fraud, or malice,
26 and a result of Defendant's wrongful conduct, Kee is entitled to an award of exemplary or
27 punitive damages
28

FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES
NEVADA CONSTITUTION / NRS § 608.05 et seq.

81. Kee hereby realleges and incorporates each and every allegation previously made herein.

82. Pursuant to Article 15, Section 16 of the Nevada Constitution, and/or NRS § 608.018, *et. seq.*, Kee was entitled to receive lawful minimum wage.

83. Upon information and belief, Defendant did not maintain all personnel records as required under NRS § 608.115.

84. Defendant did not pay Kee the proscribed minimum compensation for such work.

85. Specifically, Defendant's refusal to compensate Kee for all his commission earned is an unlawful deduction under NRS §608 *et seq.*

86. Defendant's failure and refusal to pay lawful wages to Kee violated the Nevada Constitution and NRS § 608 *et seq.*

87. Defendant's failure to pay Kee for all wages earned is also an unlawful decrease under NRS § 608.100.

88. As a result of the foregoing, Kee seeks a judgment against Defendant for the wages owed to him as prescribed by NRS § 608.140, to wit, for a sum equal to up to thirty days' wages, along with interest, costs and attorney's fees.

89. Further, Kee seeks all damages under NRS § 608.115 for failure to maintain appropriate personnel records.

90. Kee also seeks all damages under NRS § 608.100 for an unlawful decrease of compensation.

91. As a direct proximate result of Defendants' failure to pay lawful wages to Kee, he has suffered general, special, and consequential damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

92. Defendant's acts and/or omissions were fraudulent, malicious, and/or oppressive under NRS § 42.005 and as such Kee is entitled to an award of punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

1 93. It was necessary for Kee to retain the services of an attorney to file this action,
2 which entitles Kee to an award of reasonable attorneys' fees and costs in this suit.

3 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 4 1. For general damages in excess of \$15,000.00;
5 2. For special damages;
6 3. For consequential damages;
7 4. For punitive damages;
8 5. A judgment in the amount of all lawful wages owed to Plaintiff;
9 6. All damages and penalties owed to Plaintiff under NRS 608.005, *et seq.*;
10 7. For all damages and relief owed to Plaintiff under the Nevada Constitution and
11 Nevada law;
12 8. For attorneys' fees and costs incurred in this action; and
13 9. Such other and further relief as the Court may deem just and proper.

14 DATED this 27th day of August, 2019.

LAW OFFICE OF STEVEN H. BURKE

17 By: /s/ Steven H. Burke
18 STEVEN H. BURKE, ESQ.
19 Nevada Bar No.: 14037
20 9205 W. Russell Rd., Ste. 240
21 Las Vegas, Nevada 89148
22 T: 702-793-4369 | F: 702-793-4301
23 Email: stevenburkelaw@gmail.com
24 *Attorney for Plaintiff*
25
26
27
28

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EXHIBIT “1”

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: _____ Agency(ies) Charge No(s): 487-2018-02053 <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
Nevada Equal Rights Commission and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) Mr. Payne Kee		Home Phone (702) 235-5882	Year of Birth 1986
Street Address 1325 Miller Ridge Ave, North Las Vegas, NV 89031		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name BULWARK EXTERMINATION		No. Employees, Members 501+	Phone No. (480) 481-2303
Street Address 3932 Octagon Road, N LAS VEGAS, NV 89030		City, State and ZIP Code	
Name		No. Employees, Members	Phone No.
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es)) <input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 01-01-2018 09-07-2018 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I had been employed by Bulwark Extermination, since in or around July 2016, lastly as a Territorial Manager. Since in or around January 2018 to in or around September 2018, I was harassed by customers. This includes, but is not limited to, customers making racial slurs while I attempt to perform my job duties at their properties. In or around March 2018, I informed management of the harassment; however, the harassment from customers continued. In addition, I was still assigned the same customers that I had initially made racial complaints about. On or about September 7, 2018, I was constructively discharged.</p> <p>I believe I was discriminated against because of my race, Black, color, (dark skinned), national origin, (US), and retaliated against for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Digitally signed by Payne Kee on 02-11-2019 10:23 AM EST			

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EXHIBIT “2”

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Payne Kee
1325 Miller Ridge Ave
North Las Vegas, NV 89031

From: Las Vegas Local Office
333 Las Vegas Blvd South
Suite 5560
Las Vegas, NV 89101

EEOC Charge No.

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Representative

Telephone No.

487-2018-02053

Juan N. Serrata,
Investigator

(702) 388-5896

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

MAY 31 2019

Enclosures(s)


Patricia A. Kane,
Acting Director

(Date Mailed)

cc:

Todd M. Martin
Gabriel & Ashworth, P.L.L.C.
C/O Stacy Gabriel
10105 E. Via Linda
Suite 103, #392
Scottsdale, AZ 85258-2095